

**POLICY AND LAW COMMITTEE MEETING**  
**APRIL 10, 2008 – 1 PM**  
**APPOQUINIMINK STATE SERVICE CENTER – MIDDLETOWN, DE**

**Present:** Bob Osgood, SCPD; Brian Hartman, DLP; Jamie Wolfe, Consumer; Pat Maichle, DDC; Ray Brouillette, Easter Seals; Tim Brooks, CDS; Wendy Strauss, GACEC; Donny Moore, Consumer; Marge Turner, UCP; Liz Schantz; Kyle Hodges, Staff

**Absent:** Daniese McMullin-Powell, SCPD; Chris Long, DHSS/DDDS; Carolanne O'Brien, DVR; Brian Bard, Consumer; Susan Cycyk, DSCYF; Tony Horstman, Parent; Kim Siegel, ASD; Connie Hughes, DELARF; Karen Lazar, Ombudsman's Office; Rita Landgraf, SCPD; Regina Byers, GCAAPD

**CALL TO ORDER**

Bob Osgood called the meeting to order at 1:05 PM

**ADDITIONS OR DELETIONS TO THE AGENDA**

Kyle added the following issues: HB 359; Cancer Data Bill; Community Based Ombudsman; Extended School Year issue; HR 2459; and HR 1080

**APPROVAL OF MINUTES**

The minutes from the March 2008 meeting were approved as submitted.

**REVIEW OF REGULATIONS AND POLICIES**

1. DOE Final Standard Certificate Regulation [11 DE Reg. 1375 (April 1, 2008)] – SCPD previously endorsed these regulations in January 2008. No further action was required.

2. DOE Proposed Education Profile Report Regulation [11 DE Reg. 1297 (April 1, 2008)] – Motion was made, seconded and approved for SCPD to oppose the proposed regulation. Tim Brooks abstained.

3. DSS Prop. Child Subsidy "Necessity of Child Care" Reg. [11 DE Reg. 1328 (April 1, 2008)] - Motion was made, seconded and approved for SCPD to endorse the proposed regulation.

4. DMMA Proposed Medicaid Buy-in Program Regulations [11 DE Reg. 1316 (April 1, 2008)] – Jamie was concerned with the \$800 limit regarding unearned income. If a person earns over this in SSDI, they would not be eligible for the MBI program. This amount was provided in a model developed 4 years ago and therefore currently may not

be apt. Brian recommended that income derived from the Social Security Administration (SSA) be disregarded. Therefore, you could still have the unearned income limit of \$800, but disregard any income from the SSA. Many people in the target population who could benefit from the program will be excluded using the current criteria. The Committee agreed. Motion was made, seconded and approved for SCPD to share the observations with DMMA consistent with Brian's memo and the aforementioned recommendation.

5. S.B. No. 174 (Bicycle & Motorized Scooter/Skateboard Legislation) – Easter Seals, The Arc, CDS, DDC, and UCP agreed to endorse this bill. Motion was made, seconded and approved for SCPD to endorse the proposed legislation.

6. HRC Prop. Equal Accommodations & Fair Housing Regs. [11 DE Reg. 1357 (April 1, 2008)] - Motion was made, seconded and approved for SCPD to share the observations consistent with Brian's memo.

7. DDDS Human Rights Committee Policy Revision – Motion was made, seconded and approved for SCPD to endorse DLPs comments.

8. S.B. No. 222 (Early Childhood Education Quality Improvement Program) - Motion was made by Brian and seconded for SCPD to endorse the concept of the bill and then discussion ensued. Wendy provided information on Delaware Stars which is a Quality Rating and Improvement system based on graduated standards which provide incentives to increasing the quality of care and education for Delaware's children. Brian withdrew the original motion and made another motion to endorse the bill. The latter motion was seconded and approved. Marge abstained.

9. S.B. No. 227 (Gold Alert Program for Missing Persons) – Motion was made, seconded and approved for SCPD to strongly endorse the bill. Tim Brooks opposed.

10. H.B. No. 345 (Sex Offender Community Notification) – Under Brian 4<sup>th</sup> observation, Section 4336(i)(1) should be Section 4121. Motion was made, seconded and approved for SCPD to share observations consistent with Brian's memo. *Please note that this bill was stricken on April 22, 2008 and therefore a letter was not written.*

11. H.B. No. 355 (Health Insurer Coverage of Hearing Aids) – Motion was made, seconded and approved for SCPD to share the observations consistent with Brian's with the prime sponsors and let them know we prefer the substitute bill. It was noted that SCPD does not want to "undercut" the bill.

12. SS 1 for S.B. No. 71 (Interstate Compact on Placement of Children) - Motion was made, seconded and approved for SCPD to endorse the proposed legislation subject to policymaker consideration of its potential fiscal impact.

## **OTHER BUSINESS**

Medicaid Proposed Rule - Kyle provided information on a Medicaid proposed rule. In part, the alert states the following. Thousands of Medicaid beneficiaries who were previously limited to receiving care in an institutional setting may now be given the option to receive that care in their homes and communities, under a proposed rule published today by the Centers for Medicare & Medicaid Services (CMS). Under this option, states will now be able to set their own eligibility or needs-based criteria for providing HCBS. The proposed rule emphasizes "person centered" care, giving individuals an active role in developing their care plans, and the "self-direction" option in which states can allow individuals to take charge of their own services. The DRA also allows states to provide special services to individuals with chronic mental illness, including day treatment or other partial hospitalization, psychosocial rehabilitation, and clinic services. Under the proposed rule, states would no longer have to apply for a waiver to provide HCBS to Medicaid beneficiaries. Under the DRA, states only need an approved state plan amendment (SPA) satisfying the DRA criteria. Once approved by CMS, the SPA does not need to be renewed nor is it subject to some of the same requirements of waivers such as budget neutrality. Comments will be taken until June 3<sup>rd</sup>. It was agreed that Kyle will contact DMMA for to determine if they or their counterparts have commented and have any information that could be shared. The issue was deferred to the May meeting.

HR 5613 – Kyle provided an action alert regarding this federal bill which places a moratorium on several regulations which would significantly cut payments to Medicaid providers and cut services to beneficiaries. Motion was made, seconded and approved to send a letter to DE's Congressional delegation endorsing the concept of the legislation. Kyle will also email the action alert.

HB 359 – Brian reported that this bill was introduced on April 9<sup>th</sup> and should be addressed at the May Policy and Law meeting. This bill would provide preventative and urgent dental care to all eligible Medicaid recipients.

Cancer Data Bill – Brian reported that there was an article which reported that a bill would be introduced to make cancer incidence rates available to health professionals and to the public. Motion was made, seconded and approved for SCPD to endorse the concept when it is assigned a bill number.

Community Based Ombudsman – The Controller General's office has requested input on the Community Ombudsman epilogue language. This was discussed and it was agreed to provide the following recommendations: 1. You may want to consider rewording the following sentence: "The HCBSO conduct professional investigations of complaints pursuant to the federal Older Americans Act (OAA), related to the treatment of individuals residing in home community based settings or recipients of services under the DHSS waivers". There are people with disabilities and the elderly who receive State Services that are not under the Older Americans Act or DHSS waivers (e.g. the DSAAPD personal attendant services program). At present, SCPD is not sure what language would capture all the programs to be covered, but it should not be limited to simply the

ones which may fall under the OAA or DHSS waivers. 2. SCPD believes there should be language which describes that this position, while housed in DSAAPD, covers individuals in the community with all types of disabilities (e.g. developmental, cognitive, mental illness) and not just physical disabilities. In addition, it should cover kids who receive services in the community. 3. It is SCPD's understanding that Rep. Cathcart may be proposing legislation (several bills which are still being drafted) regarding the rights of people with mental illness in the community, including an Ombudsman. You may want to coordinate with his office. 4. SCPD agrees with AARP's position that deficiencies can be identified in other ways than solely through "complaint investigations" (e.g. through monitoring of programs and/or participants).

Extended School Year – Kyle provided materials on this issue. SCPD commented on 10 DE Reg. 1758 in this context in June 2007. By Delaware statute, special education students identified under certain classifications (TMH; SMH; autism; deaf/blind; orthopedic impairment; and TBI) must be offered extended school years/summer programs. See attached Title 14 Del.C. §1703(e)(f). In the past, IEP forms contained an explicit "prompt" alerting teams that students with certain classifications were entitled to extended school years. The "prompt" is absent from more recent forms and the "pilot" form. The prompt is not specifically included on its pilot IEP form and it is actually more important today since: 1) the DOE regulations omit any reference to this entitlement; 2) more eligible students are in mainstream settings as juxtaposed to special schools (e.g. Meadowood; Leach) which were familiar with the entitlement; and 3) IEP teams may be unfamiliar with the entitlement for low incidence classifications (e.g. TBI) and newly eligible students (e.g. students with Asperger's Syndrome are now classified under Autism).

Motion was made, seconded and approved to send a letter to DOE consistent with the aforementioned issues to strongly endorse inclusion of a prompt in the ESY section of the IEP.

In addition, Brian provided a draft bill and made a motion that it become an SCPD initiative. The synopsis is as follows: Special education students with classifications of deaf-blind, autism, traumatic brain injury, trainable or severe mental disability, and certain orthopedic disabilities are entitled to 12 month programs upon parental application. To ensure that parents are aware of this option, this bill requires public schools to identify eligible classifications in their standard IEP forms and document such disclosure to parents of eligible children. Kyle reported that Rep. Wagner has agreed to sponsor the legislation. The motion was seconded and approved. Tim Brooks abstained.

HB 2459 – This bill is from Missouri and address standards for universal design and affordable housing. This was deferred to the May meeting.

S. 1050 – This federal bill established standards for medical diagnostic equipment. This was deferred to the May meeting.

## **ADJOURNMENT**

The meeting was adjourned at 3:05 PM.

Respectively submitted,

Kyle Hodges  
SCPD Administrator  
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